

March 20, 2008

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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: *Ex Parte* Comments – WC Docket No. 05-195 & CC Docket No. 02-6
FY2008 Eligible Services List**

Dear Ms. Dortch:

The E-Rate Service Providers Association (“ESPA”)¹ hereby submits these *ex parte* comments, pursuant to the Federal Communications Commission’s (“FCC” or “Commission”) proceeding considering comprehensive review of the Universal Service Administrative Company’s (“USAC”) Universal Service programs² and keeping in spirit with paragraph 40 of the FCC’s *Third Report and Order*,³ to express its concern over the Commission’s apparent inconsistent policy regarding modifications to the Eligible Services List (“ESL” or “List”) and to urge the Commission in the future to carefully consider all substantive suggestions regarding clarifications, and new or modified services as part of its annual formulation of the ESL.⁴

¹ ESPA is a trade association whose members include service providers and manufacturers participating in the E-rate Program. ESPA’s purpose is to promote the E-rate Program as a means to support the delivery of advanced telecommunications and information services to our nation’s schools and libraries.

² *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 11308, ¶34, n.78 (2005) (“*Comprehensive USF NPRM*”).

³ *Schools and Libraries Universal Service Support Mechanism, Third Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 26912, ¶40 (2003) (“*Third Report and Order*”).

⁴ Pursuant to the Commission’s Funding Year 2008 Eligible Services List Public Notices, ESPA previously filed these comments in the Commission’s general Schools and Libraries Docket (CC Docket No. 02-6). See *Release of Funding Year 2008 Eligible Services List for Schools and Libraries Universal Service Mechanism, Public Notice*, 22 FCC Rcd

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In its *July PN*, the Commission stated that pursuant to its *Third Report and Order*, it sought comment on USAC's draft Funding Year 2008 Eligible Services List ("FY2008 ESL").⁵ In the same public notice, the Commission emphasized that the proceeding was limited to determining what services are eligible under the Commission's current rules and was not intended to be a vehicle for changing any eligibility rules.⁶ However, in its *October PN*, adopting the FY2008 ESL, the Commission accepted comments and added new services for one Commenter, while opting to require all others who commented on ambiguities or requested consideration of new services to refile their comments on the FY2008 ESL in the general Schools and Libraries proceeding.⁷

In an effort to create a more transparent process for updating the ESL, the Commission adopted in its *Third Report and Order* a more formalized process for adding services to the ESL. The Commission stated that the updated, draft list will "provide interested parties, both recipients and service providers, an opportunity to bring to the Commission's attention areas of ambiguity in the application of current rules in a rapidly changing marketplace."⁸ The Commission further noted that "[o]ur E-rate rules should not drive the development of communications services and technologies, but rather should permit the marketplace to flourish and innovate in ways that meet consumer needs and facilitate access to these innovations."⁹ The Commission adopted the new rule in order to "simplify program administration and facilitate the ability of vendors and applicants to determine what services are eligible for discounts."¹⁰

The Commission reiterated its position in its *Comprehensive USF NPRM*.¹¹ The *Comprehensive USF NPRM* identified the *Third Report and Order* as establishing the mechanism to achieve greater transparency. For the Commission to have limited comments in the FY2008 ESL proceeding to address only services that are eligible under the Commission's current rules, appears inconsistent with the broad policy announced in the *Third Report and Order* where it

18751 (2007) ("October PN"); see also *Comment Sought on Draft Eligible Services List for Schools and Libraries Universal Service Support Mechanism, Public Notice*, 22 FCC Rcd 14134 (2007) ("July PN").

⁵ See *July PN* at 14134.

⁶ *Id.* at 14135.

⁷ See *October PN* at 18752.

⁸ *Third Report and Order*, ¶40.

⁹ *Id.*, ¶38.

¹⁰ *Id.*, ¶40.

¹¹ *Comprehensive USF NPRM*, ¶34, n.78.

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adopted the requirement to publish and seek comment on the ESL. Therefore, ESPA submits that the most efficient vehicle to meet the Commission's objectives is allowing interested parties to submit comments through the annual ESL Public Notice process.

Nevertheless, as noted above, the Commission in its *July PN* limited comments to eligible services under the Commission's current rules and stated in its *October PN* that it did not address comments outside that very limited scope. Yet at the same time, the Commission, in an apparent response to comments submitted by First Communications, LLC ("First Communications"), added to the FY2008 ESL Broadband over Power Lines ("BPL") and BPL-enabled Internet access service.¹² On the other hand, ESPA also filed comments in response to the Commission's *July PN* providing recommendations to improve the FY2008 ESL, such as clarifying basic maintenance and redundancy and failover components that could benefit from Commission or USAC clarity.¹³ Despite its express limitation regarding comments, it appears that the Commission considered First Communications' comments, but not other comments making suggestions regarding potential additions or substantive modifications to the List. While the Commission's apparent acceptance of First Communications' comments is consistent with ESPA's view of the scope of the comment process, ESPA is concerned with the Commission's apparent disparate consideration of comments and recommendations on substantive service additions or modifications.

Accordingly, ESPA requests that the Commission consider all interested parties' recommendations regarding new or modified eligible services in the Commission's *Comprehensive USF NPRM* proceeding or issue a new rulemaking to allow submission of comments on that matter. In the future, ESPA requests that the Commission allow interested parties to submit recommendations or additions in response to the ESL Public Notice. Allowing interested parties to recommend improvements or additions to the ESL pursuant to its ESL Public Notice is the best vehicle to update the ESL. Further, such a change will make the ESL Public Notice process congruent with the Commission's *Third Report and Order*.

ESPA supports the Commission's statement that its "E-rate rules should not drive the development of communications services and technologies, but rather should permit the marketplace to flourish and innovate to meet consumer needs and facilitate access to these innovations."¹⁴ ESPA's attached comments providing recommendations to the FY2008 ESL

¹² ESPA does not take issue with the Commission adding BPL to the FY2008 Eligible Services List.

¹³ See *Eligible Services List for Funding Year 2008, Schools and Libraries Universal Service Support Mechanism*, CC Dkt. No. 02-6, Comments of the E-Rate Service Providers Association (Aug. 10, 2007). For the Commission's convenience, ESPA has attached a copy of its comments filed in August 2007 to these *ex parte* comments.

¹⁴ *Third Report and Order*, ¶38.

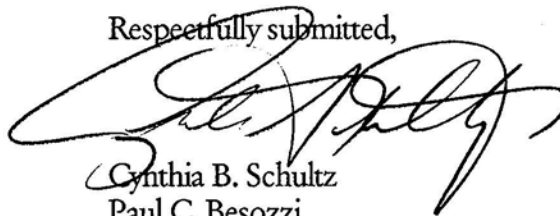
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further this policy. Additionally ESPA's recommendations along with the comments filed by others, but not given consideration, will provide greater transparency and clarity to E-Rate eligible services, thereby leading to greater efficiencies in the E-Rate application review and funding process.

Respectfully submitted,



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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of:

**Eligible Services List
For Funding Year 2008**

**Schools and Libraries Universal
Support Mechanism**

CC Docket No. 02-6

COMMENTS OF THE E-RATE SERVICE PROVIDERS ASSOCIATION

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Dated: August 10, 2007

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SUMMARY

The E-rate Service Providers Association (“ESPA”) respectfully submits these comments in response to the Federal Communications Commission’s Public Notice regarding the draft Eligible Services List (“ESL”) for the Schools and Libraries Universal Service Mechanism. The E-rate Service Providers Association (“ESPA”) is a newly-formed trade association, whose members include service providers participating in the E-rate Program. ESPA’s purpose is to promote the E-rate Program as a means to support the delivery of advanced telecommunications and information services to our nation’s schools and libraries. ESPA, in most cases, supports the changes proposed. ESPA is providing additional comments in the specific areas listed below.

- Web hosting
- Data protection components
- Redundant components
- Failover components
- Timeline for basic maintenance services
- Software licenses
- Duplicative services
- Network monitoring and management
- Cost allocation
- Editorial corrections and clarification

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of:

**Eligible Services List
For Funding Year 2008**

**Schools and Libraries Universal
Support Mechanism**

CC Docket No. 02-6

COMMENTS OF THE E-RATE SERVICE PROVIDERS ASSOCIATION

The E-rate Service Providers Association ("ESPA") respectfully submits these comments in response to the Federal Communications Commission's ("Commission" or "FCC") Public Notice regarding the draft Eligible Services List ("ESL") for the Schools and Libraries Universal Service Mechanism as submitted by the Universal Service Administrative Company ("USAC").¹ ESPA is a newly-formed trade association, whose members include service providers participating in the E-rate Program. ESPA's purpose is to promote the E-rate Program as a means to support the delivery of advanced telecommunications and information services to our nation's schools and libraries. ESPA, in most cases, supports the changes proposed. ESPA is providing additional comments in the specific areas below.

¹ *Comment Sought on Draft Eligible Services List for Schools and Libraries Universal Service Mechanism*, Public Notice, FCC 07-130, rel. July 27, 2007. ("Public Notice"). Achieve Telecom Network does not join in these comments.

I. INTRODUCTION

The FCC's Public Notice indicates that this proceeding is "limited to determining what services are eligible under the Commission's current rules; it is not intended to be a vehicle for changing any eligibility rules."² While ESPA has attempted to limit its comments to meet this requirement; it also provides additional comments that focus on certain areas that could benefit from more clarity, such as basic maintenance and redundancy and failover components.

II. WEB HOSTING

USAC's draft ESL provides additional details regarding what can and cannot be funded as a web hosting service. Specifically, the USAC draft indicates that:

Funding is limited strictly to the following eligible web hosting functions:

- Provision of web site traffic (bandwidth)
- Provision of disk space for storing applicant provided content
- Provision of File Transfer Protocol (FTP) transfer or a Web interface to upload files

ESPA endorses the intent to provide greater clarity, but questions whether this description provides an accurate representation of the services provided by a web hosting service. The first bullet point—allowing traffic to and from a website—appears to describe the services of an Internet Service Provider rather than a web hosting provider. ESPA believes that a web hosting service provides a computer server with a particular address that is accessible via the Internet, along with software that facilitates access so that web information may be displayed on end user computers. In addition, given the constant evolution of technology, ESPA suggests that the definition for eligible web hosting not be unduly limited. Wording for these suggestions is provided below. (Changes appear in italics.)

Funding *may be provided* for the following eligible web hosting functions:

- *Routing to a specific Internet address*

² *Id.*

- *Hardware and software features that provide for the display of information*
- Provision of disk space for storing applicant provided content
- Provision of File Transfer Protocol (FTP) transfer or a Web interface to upload files

III. DATA PROTECTION COMPONENTS

The FCC has organized the Eligible Services List into certain functional categories, with general consistency within each of these functions. The current treatment of Data Protection Components has been an exception to this consistent treatment. In the Data Protection functional category, certain technologies receive favorable consideration and are listed as eligible, yet other types of data protection are considered ineligible. ESPA urges the FCC to take a technologically neutral stand concerning data protection, *i.e.*, any and all basic and reasonable data protection measures should be considered as an essential component in the operation of a network.

The data protection technologies indicated as eligible for funding in the draft ESL include firewalls, proxy servers, tape backups, and uninterruptible power supplies. Technologies that also provide basic and reasonable data protection, but are indicated as not eligible, include surge protectors and lightning arrestors. The inclusion of components such as proxy servers, but exclusion of other components such as lightning arrestors and surge protectors, is inconsistent and contrary to the concept of technological neutrality.³

In addition, USAC has denied funding for a data protection component known as “intrusion protection” and for “anti-virus software.” An intrusion protection device provides security against unauthorized access, which just as easily can be accomplished by firewalls and proxy servers, but by technically different means. Anti-virus software can be critical in

³ Even though data protection components are sometimes smaller in physical size and, thus, could raise a question of whether such small items could be tracked effectively for asset management purposes, physical size should not and is not a determinant of eligibility. Many items of small size currently are eligible for funding, such as memory modules, cable connectors, and network interface devices.

protecting the operation of eligible components. Therefore, the draft ESL should allow basic and reasonable intrusion protection and anti-virus software to be eligible for funding.

The Commission in the *Universal Service First Report and Order* provided applicants with the discretion to select the technologies that applicants found best met their own needs.⁴

Specifically, the FCC stated:

[S]chools, school districts, and libraries are in the best position and should, therefore, be empowered to make their own decisions regarding which technologies would best accommodate their needs, how to deploy those technologies, and how to best integrate these new opportunities into their curriculum.⁵

Because there are many data protection components that meet the “basic and reasonable” standard indicated in the current ESL, the eligibility language should be flexible to allow a range of technologies, rather than limited to only some favored technologies. ESPA requests that the following technologically-neutral statement for Data Protection Components be adopted. (Additions in italics.)

Data Protection

Data protection components are used to ensure the continued operation of eligible equipment by protecting equipment and computer files from environmental or security hazards. Basic and reasonable measures for data protection *are eligible, and may include:*

- Firewall
- Proxy Server
- Tape Backup when used as part of an eligible server
- Virtual Private Network (VPN) Components
- *Intrusion protection device*
- *Surge protector (but not a power strip that provides no surge protection)*

⁴ *In re Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9004 (1997) (“*Universal Service First Report and Order*”).

⁵ *Id.* at 9019.

- *Lightning arrestor*
- *Anti-virus software, when used to protect eligible components*

An Uninterruptible Power Supply (UPS)/Battery Backup that protects eligible equipment is eligible as a data protection component, but no funding will be provided for UPS systems that can provide continued backup power for substantial periods in excess of that necessary for basic power protection.

The following components used for the reliable operation of a UPS are eligible:

- UPS Interface Expander
- Relay I/O Module

IV. REDUNDANT COMPONENTS

The Funding Year 2007 ESL, for the first time, indicated that redundant components were not eligible for funding. No ESL before that time indicated this. For the Funding Year 2006 ESL, USAC's draft list had suggested such an entry, but the FCC failed to adopt this recommendation. For the reasons indicated below, ESPA submits that the FCC action for the 2006 ESL was the correct one and requests a return to this status for the Funding Year 2008 ESL. The wording in the draft ESL that describes components that are not eligible is as follows:

Components that are installed in standby mode, redundant, not active and online, or otherwise not an essential element in the transmission of information within the school or library.

ESPA suggests that this wording be revised as follows:

Components that are not an essential element in the transmission of information within the school or library.

ESPA agrees that components that are not an essential element in the transmission of information with the school or library should continue to be ineligible. However, ESPA does not agree that a component, merely by being redundant or installed in a failover capacity, is *de facto*

contrary to FCC rules. The FCC has made individual determinations for when a type of technology falls within its meaning of “essential,” but has not yet articulated a clear standard that a component installed in a redundant or failover capacity is ineligible. In fact, USAC does not apply the current prohibition against redundancy on a consistent basis, *i.e.*, USAC consistently provides funding for redundant components, yet denies funding for other types of redundant components. For example, USAC has routinely provided funding for multiple hard drives that are configured so that they contain duplicating information. This approach (“duplexing,” “mirroring,” or “RAID”) is utilized so that if an individual hard drive fails, network operation can continue uninterrupted. Similarly, USAC has routinely provided funding for redundant power supplies within servers and other devices. Redundancy such as these examples has become a normal tool for designing network architectures that meet today’s standards for reliability.

Furthermore, USAC will fund network switches and routers that perform duplicating and overlapping functions. Many network switches and routers are built to allow various modules to be inserted into a core chassis. USAC will fund additional network ports for this type of equipment, but will not fund other modules that provide improved reliability. USAC’s actions are inconsistent and disadvantage many useful technologies, contrary to the FCC’s intent that E-rate funding be technologically neutral. Funding separate duplicating routers, as USAC does, or funding a smaller number of routers that have improved reliability through additional redundancy, which USAC currently does not do, meet the same objectives, while allowing the applicant to choose the technology that best fits its needs. For USAC to determine that some types of redundancy meet the FCC standard of being “an essential element”—and to fund these approaches despite the wording in the ESL—but then not fund other types of redundancy is

contrary to the technological neutrality that is at the core of the statutory intent of the E-rate Program.

Moreover, the above actions by USAC have no consistent standard for determining what technologies are favored and what technologies are not. The result is confusion in the E-rate marketplace, contrary to the shared goal of clarity and simplicity for E-rate constituents. Applicants should be free to install an industry-standard level of reliability using a range of options. ESPA respectfully requests that the FCC articulate a consistent and technologically-neutral approach so that one technology that protects an applicant's hardware and data, such as basic and reasonable redundancy features, will receive the same level of E-rate eligibility—and consistent administration by USAC—as other technologies that protect an applicant's hardware and data, such as uninterruptible power supplies. ESPA, therefore, requests that the FCC revise the language in the draft ESL that currently indicates that any and all redundancy is ineligible and direct USAC to apply a consistent approach to its administration of this area.

V. FAILOVER COMPONENTS

The draft ESL on pages 20-21 suggests new language that would make another tool for the design of reliable networks ineligible:

Failover products or services are not eligible. Any stand alone products [sic] or services that are only utilized when the primary fails are not eligible.

ESPA respectfully opposes adoption of this new language and suggests that the previous arguments regarding redundant components apply to an even greater degree for this proposed addition. This new language would indicate that uninterruptible power supplies are ineligible—despite being specifically indicated as eligible in another part of the draft ESL—because the very reason for such devices is for “failover,” *i.e.*, to automatically engage battery power protection if

required. Therefore, ESPA requests that the proposed additional language for failover components not be implemented in the final FY2008 ESL.

VI. TIMELINE FOR BASIC MAINTENANCE SERVICES

The draft ESL continues to include the statement that “[a]ll requests in this category are for services to be delivered within the July 1 to June 30 Funding Year.” In essence basic maintenance is treated as a recurring service, yet is reviewed by USAC under the Priority 2 timeline so that funding decisions are generally received well after the start of the time period when maintenance services are to begin. The result for E-rate applicants is similar to having appliances and electrical devices in your house, but with no electricity and no money to pay for the electrician, *i.e.*, if substantial components that achieve the objective of the E-rate program are obtained in a previous Funding Year, then USAC should facilitate the ongoing maintenance of that investment during other Funding Years.

In all other categories of service except basic maintenance services, USAC allows non-recurring services to be provided through September 30. In addition, except for basic maintenance services, funding requests for non-recurring services which are approved by USAC on or after March 1 are provided an additional year for services to be delivered. In addition, approved service substitutions and SPIN changes generally trigger an additional year, and service extension deadlines may be submitted for non-recurring services.

Basic maintenance is required each Funding Year and is requested each Funding Year, unlike Internal Connections funding requests, which tend to be periodic installations and are not required to be delivered in the actual Funding Year if service delivery extensions are received. ESPA suggests, therefore, that basic maintenance services be treated in a more expedited timeline.

In general, USAC reviews applications that consist only of Priority 1 funding requests on a timelier basis than other applications. Applicants generally receive funding decisions for Priority 2 services including basic maintenance much later—in most cases these decisions are issued by USAC only after the start of the Funding Year and in many cases only after the conclusion of the Funding Year. Applicants, therefore, are left in a tenuous position of being forced to decide whether to proceed or not proceed with basic maintenance services prior to learning whether or not E-rate funding will be received. That is, if a funding request is approved only after the Funding Year has ended—a realistic prospect for Priority 2 services—it is too late for the applicants to utilize the funding if they have not been able to otherwise pay for these services.

Adding to this difficulty is the strictness of FCC rules regarding basic maintenance services. Under these rules, if a contract provides more than what the FCC considers to be basic maintenance, the entire contract is found to be ineligible. The 30% rule, which provides funding for the majority of a request even if a small portion of the funding request is found to be ineligible, does not apply. This limitation needs to be eased.

This issue is further exacerbated, because E-rate constituents are uncertain about what is included as eligible basic maintenance. Maintenance for Internal Connections components was made a separate category of service through the *Third Report and Order*.⁶ Since that time, the ESLs have essentially repeated wording directly from the *Third Report and Order* without any additional clarifying information. Other categories of service provide substantial additional information that clarify and expand on FCC rules and Orders.

⁶ *In re Schools and Libraries Universal Service Support Mechanism*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26917 (2003) (“*Third Report and Order*”).

Overall, this small amount of guidance, the severe penalty for failing to understand a minor nuance of this guidance, and the risk that applicants face through the timing of funding decisions in comparison to the time when services must be received adds to a significant burden on both the applicant and service provider community.

ESPA recognizes that these factors, in total, raise issues that go beyond the scope of comments to the ESL. However ESPA believes that the ESL presents an opportunity to update and improve one aspect of this basic maintenance issue. We request that the text that limits funding to only those services provided within the July 1 to June 30 Funding Year be conditioned upon prompt USAC review and decision on basic maintenance funding requests.

Specifically, ESPA proposes that the following language amend the current language in the introductory paragraphs to the Basic Maintenance category of service.

For funding requests in which USAC has issued a decision on or before July 1, 2008, services are to be delivered within the July 1 to June 30 Funding Year.

For funding requests in which USAC has not met this timeline, delivery of services would follow the same process as for other categories of service. ESPA believes that this suggestion will provide USAC with an opportunity for prompter funding decisions in this category of service, resulting in better service to the public in this uncertain area.

VII. SOFTWARE LICENSES

The FCC implemented the 2-in-5 rule for Internal Connections components in the 3rd Order of Docket 02-6, and at the same time created a separate category of service for basic maintenance of Internal Connections that was not subject to the 2-in-5 rule. When taking this action, the Commission may not have realized that some types of software licenses are obtained through annual leases rather than specific purchase of a specific software version. The current status is that E-rate applicants who wish to choose such an

annual license for eligible software are severely handicapped by the 2-in-5 rule because, since the implantation of this rule, the required software licenses cannot receive E-rate support for 3 out of every 5 years.

Oftentimes, the costs to educational organizations for these annual fees are highly favorable compared against the cost of a perpetual license for a specific software version, because the annual approach automatically included software upgrades that have extra costs under the perpetual license model. In other cases, the software license is not available by any means other than the annual license approach. Most, but not necessarily all, of the software licenses obtained on this annual basis are client access licenses, which are eligible under FCC rules for eligible software such as network operating systems and e-mail.

ESPA suggests that applicants should be able to make choices for the most cost effective components available on even-handed basis - - that applicants should not be dissuaded from obtaining important and eligible components based only on a software vendor's licensing model. Software vendors should be able to utilize a range of licensing options in order to provide customer choice and determine the approach that will be most successful in a competitive marketplace.

If the FCC was not fully aware of the impact of the 2-in-5 rule on this subset of eligible Internal Connections components, the annual update to the ESL presents an opportunity for correction. ESPA suggests that it is within the scope of the annual ESL update to correct any inadvertent oversight regarding the eligibility of products and services.

ESPA therefore respectfully proposes that, in this one narrow area of eligible software obtained through annual license fees, the 2-in-5 rule should not apply. Administratively, this can be accomplished most easily by allowing funding for such software in the Basic Maintenance of Internal Connections category of service. Proposed language is as follows, to be added to the entry on page 13 of the draft ESL for Client Access Licenses.

Eligible client access licenses and other eligible software licenses that are obtained through annual lease fees are exempt from the 2-in-5 rule. Applicants are to obtain funding for such software licenses in the Basic Maintenance Category of Service.

VIII. DUPLICATIVE SERVICES

The draft ESL contains the following language regarding duplicative services:

Duplicative products or services are not eligible. Any product or service that is duplicative of a service already requested or being used by the applicant will not be eligible. Services that provide necessary bandwidth requirements consistent with an applicant's Technology Plan, such as multiple T-1 lines when appropriate for the population served and the services to be received, are not duplicative.

This wording is an appropriate attempt to guide applicants toward compliance with the FCC rules regarding duplicative services. However, the wording does not achieve this objective, because it fails to indicate the FCC's highly-specific definition for what is considered duplicative, which is as follows:

Duplicative services are services that deliver the same functionality to the same population in the same location during the same period of time.⁷

The wording in the draft ESL as it stands could be misinterpreted by applicants—and even by USAC's own reviewers—to mean, for example, that separate cost-effective services for teacher e-mail and student e-mail will not be funded, that both wired and wireless Internet

⁷ *In re Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9210 (2003) (“*Second Report and Order*”).

connectivity cannot be obtained, or that a Voice over IP telephony service for some school locations may not be used in conjunction with traditional telephone service for other locations. None of these services are duplicative under FCC rules, but, without knowledge of the FCC's specific definition, may appear to be so. For these reasons, ESPA suggests that the FCC's specific definition of "duplicative" be included in the wording for this section.

IX. NETWORK MONITORING AND MANAGEMENT

Monitoring and management tools have become a standard part of any well-designed computer network. Basic network and management tools should, therefore, be indicated as eligible.

In past updates to the ESL, the FCC and USAC have recognized that, consistent with Congressional intent, universal service is an evolving standard. Products and services that at one time were highly sophisticated and expensive have become inexpensive and commonplace as technology advances. For example, the October 14, 2004 ESL indicated "firewall service may be funded as a part of Internet access because a firewall is necessary to ensure continued operation of the network."⁸ Prior to this time, a firewall service had been considered ineligible, ostensibly because it did not meet the standard of eligibility of being an "essential component" in the operation of a network.

Similarly, the November 22, 2005 ESL indicated that "Virtual Private Network components are eligible for discount if they provide basic and reasonable security protections to prevent unauthorized access to the information, software, and systems of an applicant's eligible

⁸ *Release of Funding Year 2005 Eligible Services List for Schools and Libraries Universal Service Mechanism*, Public Notice, 19 FCC Rcd 20221, 20242 (2004).

components.”⁹ Prior to this time, Virtual Private Network components had been indicated as ineligible. In this same version of the ESL, proxy servers were for the first time indicated as eligible, whereas they had been considered ineligible previously.¹⁰

Thus, the FCC has correctly recognized the evolving nature of communications technology and the standard inclusion of features that have, over time, become “essential” in that they have become a standard component part of any system designed for standard levels of reliability. Such is the case with network monitoring and management. Monitoring and management provide automated alerts in the event of a component failure or potential failure. Such features provide the ability of a remote technician to respond immediately via the Internet, in many cases saving both time and money in responding to a network emergency. And these features provide a proactive ability to manage a network to the level of reliability expected in today’s computerized world.

Specifically, ESPA requests the following addition to the Miscellaneous section of the Eligible Services List:

*Network
monitoring and
management*

Network monitoring and management products and services can be eligible, if they provide basic and reasonable measures for improved network reliability. Substantial labor costs to provide services such as manual 24-hour network monitoring are not eligible.

It is also significant to note that network monitoring and management of Priority 1 services have been and are a fundamental component to those services. As a result, network monitoring and management is funded by USAC as a part of those services, and such activity

⁹ *Release of Funding Year 2006 Eligible Services List for Schools and Libraries Universal Service Mechanism*, Public Notice, 20 FCC Rcd 18745, 18799 (2005).

¹⁰ *Id.* at 18791 (“A proxy server is eligible for discount if it provides basic and reasonable security protections to prevent unauthorized access to the information, software, and systems of an applicant’s eligible components.”).

would continue under ESPA's proposed language. In addition, and consistent with technological neutrality, the proposed language would provide funding of basic network monitoring and management within the Priority 2 categories.

ESPA recognizes that the FCC, in the *Third Report and Order*, indicated that Basic Maintenance of Internal Connections could not include "[s]ervices such as 24-hour network monitoring and management."¹¹ However, this provision was indicated in the context of "allegations of waste, fraud, and abuse" and was offered in concert with the FCC's previous determination in 1997 that basic maintenance services were eligible if they are "necessary to the operation of the internal connections network."¹² ESPA believes that the description of 24-hour network monitoring and management in the *Third Report and Order* was referring to substantial and wasteful costs of personnel to provide continual monitoring services, as opposed to automated systems that would alert personnel only when appropriate. ESPA's proposal will not create an environment conducive to waste, fraud, and abuse, but in fact, will save time and money by providing applicants with efficient tools for the standard level of reliability expected of today's networks.

X. COST ALLOCATION

FCC rules indicate that cost allocation can be used for partial funding of a component that includes both eligible and ineligible features. USAC has communicated the FCC cost allocation rules, and its administration of those rules, on its website. This includes information about how service providers can submit cost allocation information to USAC about their products and services.

¹¹ *Third Report and Order* at 26922.

¹² *Id.*

Such a submission can provide uniformity in the cost allocation process and can improve USAC reviews for components in which cost allocation is required. Unfortunately, USAC does not provide all of this cost allocation information to applicants, so in many cases, applicants are uncertain how to make funding requests consistent with the cost allocation information filed with USAC.¹³ If applicants had access to the cost allocation information on file at USAC, applicants could file funding requests that could be more easily reviewed.

For these reasons, ESPA requests that the Commission consider an addition to the ESL in order to direct USAC to make cost allocation information more widely available. This can be accomplished through the addition of the following language to the cost allocation entry on page 22 of the draft ESL:

USAC will make available a full listing of cost allocations it has received from service providers and manufacturers.

With such an addition, the FCC will provide USAC additional guidance regarding its administration of cost allocation, just as it has provided guidance to USAC in the past through specific wording in the ESL.¹⁴ The result will be more funding requests that are consistent with USAC information, speeding up the review process for both USAC and for E-rate constituents.¹⁵

¹³ A limited amount of cost allocation information is provided by the Eligible Products Database, which is an FCC-mandated pilot program that provides a web-based list of components that are eligible for funding. However, the Eligible Products Database includes Internal Connections products only, not any services, and includes components only from participating manufacturers. However, cost allocations are necessary for certain Priority 1 services, and for certain Internal Connections components from manufacturers that are not currently participating in the Eligible Products Database pilot program.

¹⁴ For the final 2007 ESL, the FCC added the following language to the entry for cost allocation: "When no cost allocation is provided for funding requests that require cost allocation, USAC will contact the applicant to request such cost allocation." *Release of Funding Year 2007 Eligible Services List for Schools and Libraries Universal Service Mechanism*, Public Notice, 21 FCC Rcd 12310, 12334 (2006). ESPA seeks similar FCC guidance to USAC to make cost allocation information more widely available.

¹⁵ Vendors generally wish to have their cost allocation determinations widely known. However, any vendor what wished to keep this information proprietary should be allowed to so indicate to USAC.

XI. EDITORIAL CORRECTIONS AND CLARIFICATION

ESPA suggests that the FCC make two editorial corrections to the draft ESL. On page 6 of the draft ESL, the statement appears that “[s]upport in this funding category is only available for basic conduit access to the Internet” However, because voicemail services and an Interconnected Voice over IP service can be funded in the Internet access category, ESPA suggests elimination of the word “only.”

On page 9 of the draft ESL, the statement appears that “Internal Connections do not include services that extend across a public right-of-way beyond the school or library facility.” ESPA suggests that a more accurate statement appears on page 24 of the draft ESL, which should be used on page 9, as follows:

FCC rules establish a rebuttable presumption that a connection does not constitute an Internal Connection if it crosses a public right of way.

For clarification, ESPA recommends that the following information be added to the end of the entry on page 6, for Distance Learning and Videoconferencing:

Videoconferencing components at customer sites may be eligible as Internal Connections. See the Video Components entry in the Internal Connections section of this Eligible Services List for further information.

XII. CONCLUSION

ESPA appreciates this opportunity to provide comments to the FCC and commends the FCC for this approach that allows constituents to comment on a draft ESL. We note that the *Third Report and Order* states that “[t]he Commission expects that this public notice [providing a final Eligible Services List] will be released on or before

September 15 of each year.”¹⁶ Since the adoption of the public comment approach, the release dates of the ESL have been October 14, 2004, November 22, 2005, and October 19, 2006.

Release of the final ESL well after the September 15 expectation means that USAC has limited time to provide further guidance and interpretation as part of its standard outreach to applicant and service provider representatives.¹⁷ Applicants are under pressure to amend RFPs and procurement processes to accommodate final E-rate eligibility standards. Service providers must adapt their marketing messages to incorporate the latest eligibility guidance. ESPA requests that closer adherence to the expected September 15 timeline for release of the final ESL be followed.

Respectfully submitted,

E-RATE SERVICE PROVIDERS ASSOCIATION

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¹⁶ *Third Report and Order* at 26929.

¹⁷ Using the final 2007 Eligible Services List as an example, E-rate constituents requested considerable additional guidance concerning provisions in the List for wireless Internet access from portable electronic devices, and interconnected Voice over IP services. New provisions related to these services required considerable time to understand and incorporate.

CERTIFICATE OF SERVICE

I, Peter M. Andros, certify on this 10th day of August, 2007, a copy of the foregoing
"Comments of the E-Rate Service Providers Association" has been served via electronic mail or
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